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## Hawaiian Gazette Co., Ltd.

HONOLULU, TERRITORY OF HAWAII.

## ALL SERENE WITH JURY

### A Contempt Case Could Not Be Got Up.

### Kamuela Found Guilty Upon Plainest Evidence.

### Axtell-Hendrick Verdict Set Aside. De Bolt Has Long Calendar at Chambers.

Kamuela was found guilty yesterday afternoon of assault with a weapon. Judge Gear sentenced him to be imprisoned at hard labor for eighteen months, the term being but six months less than the longest the law allows. Ella Long, who defended Kamuela by assignment of the court, had put the defendant on the stand as the sole witness for the defense and asked him but one question. This was if he stabbed the Japanese alleged to have been assaulted.

"I did not," was the answer. Mr. Fleming for the Territory was met with objections to any cross-examination of the defendant which did not bear upon that simple denial of guilt, yet some questions objected to on that ground were allowed.

The jury retired at 12:25 and half an hour later called the bailiff to give them a fresh supply of blank ballots. They came into court after an absence of more than an hour and through Carl Willing as foreman announced that they could not agree. They had taken ten ballots and were divided eight to four. Judge Gear sent them down town for lunch, giving a gentle hint by remarking that it ought to be possible to reach a verdict under the evidence presented. At 3:30 the jury returned a verdict of guilty.

#### STORY OF THE CASE.

According to the evidence, Kamuela went into the house of a Japanese at Kamoihi, while the occupant was taking a siesta, and gathering up certain personal effects was about to make off with the bundle. At this juncture the Japanese awoke and, springing off his couch, exclaimed, "What's the matter, kanaka?" As the Japanese went to intercept the intruder's escape, Kamuela jabbed him in the shoulder with a jack-knife and ran out with the weapon in his hand. As he was pursued with hue and cry by the Japanese and his neighbors, Kamuela kept them at bay by brandishing the knife about him. When the pursuit became too hot he threw the knife away but it was found and he was captured virtually red-handed. His defense in court did not amount to a whit more than his formal plea of not guilty on arraignment excepting that it was a denial of guilt under oath.

#### THE SAME JURY.

The jury that convicted Kamuela was the one impaneled on Thursday, some of whose members struck duty on Friday morning owing to a news item in the Advertiser relating to their impaneling. As previously reported, Judge Gear requested the Attorney General to take such proceedings as he found necessary for calling the Advertiser to account for impeding justice in the case.

Attorney General Andrews reported with authorities yesterday morning. His investigation had confirmed his first impression that there was nothing actionable in the offending article. It had been his desire to be sure about it, as the jurors seemed to be aggrieved and were entitled to protection. There were Eastern cases in which juries were attacked with severe criticism and aspersions while trials were in progress, but in which the supreme courts held there was nothing actionable. In the present case it appeared the article at the worst was but a criticism of the defendant's attorney for what he did in connection with the impaneling of the jury. Mr. Andrews maintained that the jury must not be influenced by newspaper comment, citing the practice in some places of forbidding jurors the perusal of published reports of cases they were trying at the time. He stated that it was impossible there should be any hidden meaning in the offending article, saying of it:

"It mentions the race line and the color line, but there is nothing in it derogatory to the natives. Suppose the paper had said that there was a red-headed jury and some one should object. There would not be anything that could be taken up under the law."

Judge Gear asked what was to be done. The Attorney General replied that his department was ready to go on with the trial. Mr. Long stated

that the defense was also ready to proceed. This was all there was about it then, none of the jurors offering to speak, and the trial was forthwith resumed. In his charge to the jury, however, Judge Gear briefly instructed them that they were not to consider any publications or newspaper comments.

#### THE COURT HELPLESS.

Judge Gear probably welcomed the way the contempt proceedings terminated. Under his own recent deliverance he is absolutely powerless to enforce a penalty for that offense. An unpaid fine would make the offender liable to imprisonment in Oahu prison, so that if the amount was but a dollar it would be an "infamous" punishment. Therefore, before Judge Gear could have the editor of the Advertiser landed in prison, the case would have to be investigated by the grand jury. As contempt is not an indictable offense the grand jury would not know what to do with the case. Even if one threw a brick at the Judge in open court, he could not protect himself by summary process of contempt.

#### LONG CHAMBERS CALENDAR.

Judge De Bolt, as presiding judge at Circuit Court chambers this week, had a long calendar yesterday. On the report of W. A. Wall, commissioner in the partition case of M. F. Scott et al. vs. E. N. Pilipo et al., the court granted leave to sell the property at public auction, at an upset price of \$5,000, after due notice by newspaper and posters. W. C. Achi for the commission; Castle & Withington and Enoch Johnson, separately, for certain defendants; J. A. Magoon, L. A. Dickey and John Greig, each for himself.

In the matter of the estates of H. F. Gibbs and Clara Schneider, the orders for hearings made by Judge Gear were rescinded for the reason that his clerk had failed to advertise them as directed. New orders were signed, returnable November 16. Atkinson & Judd appeared for the administrator. In the matter of the estate of F. I. Cutter, on motion of F. Andrade a continuance was ordered for the purpose of taking testimony by commission in Japan.

A. Frank Cooke was appointed administrator of the estate of Walter Lee under bonds of \$1800. The estate consists of an expectancy of \$700 from the Ancient Order of Foresters, \$600 in bank, household furniture, horse and buggy, yacht, etc., valued at \$400. His heirs at law are a widow, two adult and two infant children. Stewart appeared for the petitioner.

Albert Barnes vs. C. R. Collins, bill for dissolution of partnership and accounting, was continued indefinitely. W. A. Whiting and C. F. Clemons for plaintiff; W. T. Rawlins for defendant. Foreclosure of mortgage was ordered in the case of Mary E. Foster vs. Lum Kin, trustee, et al. P. D. Kelleit, Jr. being appointed commissioner of sale and publication of notice ordered in the Advertiser and a Chinese paper. Date of sale will be set in decree. E. A. Mott Smith for plaintiff; defendants in default.

In the matter of the guardianship of Kaaua, now deceased, the account of C. P. Laukea, guardian, was approved, excepting an overcharge of commission, \$11.40, and he ordered discharged upon paying over the balance to the administrator. W. A. Whiting for guardian; J. J. Dunne for administrator.

The C. R. Bishop trust accounts were referred to George Lucas as master. Motions to dismiss the appeals in the cases of Hawaiian Electric Co. against W. C. King and King Bros. were denied, the motions of plaintiff for leave to amend notices of appeal being granted. Smith & Lewis for plaintiff; C. W. Ashford for defendant.

#### NEW TRIAL ORDERED.

Judge Robinson yesterday set aside the verdict in the suit of J. C. Axtell vs. H. E. Hendrick, which awarded the plaintiff \$5000 damages against the defendant for malicious prosecution. He regarded the amount of damages outrageous, a search of many cases of the kind showing no verdict for damages approaching it. A new trial was ordered and further proceedings were assigned to Judge De Bolt.

At the outset of the hearing a motion to strike the motion for a new trial from the files was overruled. After the decision, to which plaintiff noted exceptions, plaintiff moved for an order requiring defendant to furnish additional security. This was set for hearing on Wednesday.

Another motion on file is for an attachment against the property of defendant, on the grounds that H. E. Hendrick, two days after the verdict, sold his property to C. M. Lovested for \$5500, of which \$1000 was cash and the balance secured by a note or notes, that he was secreting his property, also damaging and wasting it, and that he was about to leave the Territory.

C. C. Bittling appeared for plaintiff, and Thomas Fitch for defendant. Mr. Fitch was on crutches owing to his recent attack by inflammatory rheumatism. He stated that he intended leaving for San Francisco today, but would return in January to attend to his cases here.

A temporary injunction was granted by Judge De Bolt, under a bond in \$250 to Hendrick by Axtell with E. O. White as surety, restraining Hendrick from disposing of his property subject to execution.

#### POSSESSION APPEAL.

Pang Chong has appealed from judgment in the Honolulu District Court against him and in favor of the Board of the Hawaiian Evangelical Association and R. Maka, for summary possession of a piece of land on the western corner of Beretania and Smith streets, Honolulu, and costs of court. Defendant was shown to have been in arrears of rent as lessee and failed to pay the same upon demand made repeatedly.

#### COURT NOTES.

The Supreme Court opened yesterday morning only to adjourn until next Monday.

Judge Robinson will resume the jury trial of Peabody vs. Judd et al. this morning. In the injunction case of S. M. Ballou vs. Mutual Telephone Co., Ltd., it is stipulated by Hatch & Ballou for plaintiff and Smith & Lewis for defendant that defendant have fourteen days more in which to plead, etc.

William O. Smith, administrator of the estate of Ethel P. N. Gay, deceased, has made return and account of sale of real estate.

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36 inch special at .....45c yd.  
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inch, \$1.25 quality.....90c

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FORT STREET

## JUDGE ESTEE CHARGES FEDERAL GRAND JURY

(Continued from Page 2.)

States and in doing so has provided for the protection of all money or postal orders issued by authority of the Postal Department of the government, and the punishment of all violations of the laws in that regard. You will be called upon to examine some offenses of this character, and you will give them the same careful consideration that you do to all offenses against the laws of the United States laid before you for investigation.

#### THE REVENUE LAWS.

Finally, among the matters which you will be called upon to consider, will be violations of the Act of June 10, 1890, entitled "An Act to simplify the laws in relation to the collection of the revenue" (Vol. L, Supp. R. S. U. S. 750), commonly known as the "Customs Administrative Act."

The particular violation of this law arises under Section 9 thereof, which reads as follows:

"That if any owner, importer, consignee or agent or other person shall make or attempt to make any entry of imported merchandise by means of any fraudulent or false invoice, affidavit, letter, paper or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or shall be guilty of any willful act or omission by means whereof the United States shall be deprived of the lawful duties, or any portion thereof accruing upon the merchandise or any portion thereof, embraced or referred to in such invoice, affidavit, letter, paper or statement, or affected by such act or omission, such merchandise or the value thereof to be recovered from the person making the entry, shall be forfeited, which forfeiture shall only apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles of merchandise to which such fraud or false paper or statement relates. And such person shall, upon conviction, be fined for each offense, a sum not exceeding five thousand dollars, or be imprisoned for a time not exceeding two years or both, in the discretion of the Court."

It is needless for me to remind you that the object of this section of the customs administrative act is to secure to the United States its just duties. And it is also the intent of the revenue laws of the United States that all parties importing or bringing into the United States merchandise of any kind, shall stand upon an equal footing before the law. And any violation of these customs laws is not only a deprivation of the United States of its just dues, but also works an injustice to all others who conform to the laws and pay the duties imposed upon the merchandise they import.

#### IMMIGRATION LAWS.

Gentlemen of the Jury: It has been the settled policy of the United States to exclude from our shores certain classes of immigrants deemed to be an undesirable element to add to our population, and the laws of Congress passed relative thereto from time to time, have been sought to be rigidly enforced by both the administrative and judicial branches of the government. Among the classes excluded are women and girls who are imported for purposes of prostitution, which subject I have already called to your attention.

Among the other classes are persons unlawfully brought to the United States under the provisions of the Act of March 3, 1903, relative to the "Immigration of aliens into the United States" such unlawfulness consisting in the fact that they have been assisted or encouraged to come into the country under contracts or agreements, or offers or promises of labor and their transportation prepaid by the parties encouraging them to come into the country under the conditions stated. I do not deem it necessary to go into these laws in detail. The United States District Attorney, as I have heretofore suggested to you, will be ready and willing to aid you in your investigations into all these matters, making clear to you what laws are claimed to have been violated and in what respect.

If you should desire any further instructions from the Court you are at liberty to ask for them at any time and upon any of the matters embraced in this charge or any other offenses that you may have under investigation.

I appoint Mr. Atwater, your foreman; you can select your own secretary.

ESTEE.

October 12, 1933.

"I see that the superintendent of a cooking school has had to retire on account of her health."  
"What is the matter with her?"  
"Dyspepsia."—Judge.

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